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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA

12 CHRIS LUSBY TAYLOR, NANCY A. PEPPLE-) No.: CIV. S-01-2407 JAM GGH
13 GONSALVES, GARY KESSELMAN, SUSAN)
14 SWINTON, DAWN E. STRUCK, and) **ORDER DENYING**
15 WILLIAM J. PALMER) **PLAINTIFFS' MOTION FOR**
16 On behalf of themselves and other persons) **TEMPORARY RESTRAINING ORDER**
17 similarly situated,) **AND FOR PRELIMINARY INJUNCTION**
18 Plaintiffs,)
19 vs.)
20 JOHN CHIANG, in his capacity as)
21 CONTROLLER OF THE STATE OF)
22 CALIFORNIA, and STEVE WESTLY,)
23 individually,)
24 Defendants.)
25 _____
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Hearing:
Date: May 30, 2012
Time: 10:00 a.m.
Courtroom: 6

(The Honorable John A. Mendez)

[PROPOSED] ORDER DEN. PLS.' MOT.
FOR TRO AND FOR PRELIM. INJ. -
NO. CIV. S-01-2407 JAM GGH

1 Plaintiffs' Motion for Temporary Restraining Order and for Preliminary Injunction
2 came on for hearing on May 30, 2012, at 10:00 a.m. in Courtroom 6 of the United States District
3 Court, Eastern District, the Honorable John A. Mendez, presiding. Plaintiffs Chris Lusby Taylor, et al.
4 appeared by and through their counsel, Robert A. Buccola, C. Brooks Cutter, Lori M. Porter, and
5 William W. Palmer. Defendants John Chiang, et al. appeared by and through their counsel, Robin B.
6 Johansen and Margaret R. Prinzing of Remcho, Johansen & Purcell, LLP.

7 The hearing arose from plaintiffs' motion for Temporary Restraining Order and for
8 Preliminary Injunction, which plaintiffs filed on May 15, 2012 and defendants opposed. Prior to filing
9 that motion, plaintiffs had filed a Motion for Leave to Amend First Amended Complaint, which
10 defendants opposed and which was scheduled to be heard on June 13, 2012. In addition, defendants
11 had filed a Motion for Protective Order and Request for Rule 16 Conference and Scheduling Order and
12 plaintiffs had filed a Motion to Compel Discovery, both of which the Court had previously ordered the
13 parties to re-notice for hearing before the Honorable Gregory G. Hollows. At the May 30, 2012
14 hearing, the Court heard plaintiffs' Motion for Temporary Restraining Order and for Preliminary
15 Injunction, and in addition held a status conference.

16 The Court, having reviewed the record, having read and considered the supporting and
17 opposing points and authorities, and having heard and considered the arguments of counsel, and good
18 cause appearing, finds and orders as follows:

19 1. Defendants' Request for Judicial Notice in Support of Opposition to Plaintiffs'
20 Motion for Temporary Restraining Order and for Preliminary Injunction is GRANTED.

21 2. The Court finds that the requirements for a temporary restraining order have not
22 been met. Specifically, plaintiffs have not demonstrated the likelihood that they will suffer irreparable
23 injury if preliminary relief is not granted. Plaintiffs' Motion for Temporary Restraining Order and for
24 Preliminary Injunction is therefore DENIED.

25 3. The Court declines to set a hearing on plaintiffs' Motion for a Preliminary
26 Injunction.

27 4. Plaintiffs requested to withdraw their Motion for Leave to Amend First
28 Amended Complaint in order to draft a new complaint with new plaintiffs and allegations. Plaintiffs
[PROPOSED] ORDER DEN. PLS.' MOT. FOR TRO AND FOR PRELIM. INJ. –
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1 will file a new Motion for Leave to Amend First Amended Complaint. Consequently, the hearing and
2 motion scheduled for June 13, 2012 are hereby VACATED.

3 5. It is hereby ordered that discovery in this matter is STAYED until further notice
4 and that the discovery motions that had been ordered to be re-noticed before the Honorable Gregory G.
5 Hollows are hereby VACATED.

6 6. The parties shall comply with the following page limits in subsequent filings
7 with this Court: Opening and opposition briefs shall be no more than 25 pages, and reply briefs shall
8 be no more than 10 pages.

9 | DATED: 6/11/2012

/s/ John A. Mendez
THE HONORABLE JOHN MENDEZ
UNITED STATES DISTRICT COURT JUDGE

Approved as to Form:

Dated:

Robert A. Buccola
Attorney for Plaintiffs

(00173649-2)

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1 **CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 137**

2 Pursuant to Local Rule 137(a), I certify that this office served the foregoing Proposed
3 Order Denying Plaintiffs' Motion For Temporary Restraining Order And For Preliminary Injunction
4 upon all other parties by email on June 1, 2012. It has been seven days since such service was
5 completed.

6 Dated: June 8, 2012

7 _____
8 s/ Margaret R. Prinzing _____

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On June 1, 2012, I served a true copy of the following document(s):

**[Proposed] Order Denying Plaintiffs' Motion
for Temporary Restraining Order and for
Preliminary Injunction**

on the following party(ies) in said action:

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- BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and

depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.

- placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.
 - BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
 - BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.
 - BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.
 - BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on June 1, 2012, in San Leandro, California.

Michael Narciso